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State of Wisconsin

Labor and Industry Review Commission

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Senator Nass, JCRAR Co-Chair
Representative Neylon, JCRAR Co-Chair
Adam Field, Committee Clerk
Joe Zapf, Committee Clerk
Edward Blazel, Assembly Chief Clerk
Kay Inabnet, Assembly Chief Clerk
Michael Queensland, Senate Chief Clerk
Jeff Beighley, Senate Chief Clerk

SENT VIA EMAIL

Re: Report of the Labor and Industry Review Commission Regarding Biennial
Review of Administrative Rules

Dear Committee Co-Chairs, Committee Clerks, and Chief Clerks:

Pursuant to Wis. Stat. § 227.29(1), the following is the report of the Labor and
Industry Review Commission with respect to the commission's administrative rules:

- A) The commission currently has no rule as described under sub. (a), (b), (c), (d),
or (e) of the statute.
- B) In the 2021 report the commission had eight rules as described in sub. (d):
 - 1) **LIRC 2.05** describing the procedures for judicial review of
commission unemployment insurance decisions.
 - 2) **LIRC 3.05** describing the procedures for judicial review of
commission worker's compensation decisions.
 - 3) **LIRC 4.04** describing the procedures for judicial review of
commission equal rights and public accommodation decisions.

These three rules were considered duplicative because they largely restated statutory
provisions regarding appealing commission decisions to circuit court: **Wis. Stat.**
§ 108.09(7) governs judicial review of unemployment insurance decisions; **Wis. Stat.**
§ 102.23 governs judicial review of worker's compensation decisions; **Wis. Stat.**

§ 111.395 governs judicial review of equal rights decisions (which are filed under chapter 227); and **Wis. Stat. § 106.52(4)(c)** governs judicial review of public accommodation decisions.

- 4) **LIRC 1.025(1)** providing that a petition for review is deemed filed only when it is actually received by the commission or by the Department of Workforce Development.

This rule was in conflict with **Wis. Stat. § 108.09(6)(a)**, amended in 2015, which requires that petitions for review in unemployment insurance cases must be filed with the commission and not the Department of Workforce Development, and with **Wis. Stat. § 108.18(3)**, amended in 2015, which provides that petitions for review of worker's compensation decisions may be filed with the commission, the Department of Workforce Development, or the Division of Hearings and Appeals in the Department of Administration.

- 5) **LIRC 2.01(1)(a)** setting forth the addresses of the Department of Workforce Development's various unemployment hearing offices where petitions may be filed.

Again, this rule was in conflict with **Wis. Stat. § 108.09(6)(a)**, amended in 2015, which requires that petitions for review in unemployment insurance cases must be filed with the commission and not the Department of Workforce Development.

- 6) **LIRC 2.05** explaining the process for filing an appeal to circuit court of commission unemployment insurance decisions and providing that "the action shall be commenced against the commission, and the party in whose favor the decision was made shall also be made a defendant."

This rule conflicted with **Wis. Stat. § 108.09(7)(a)**, amended in 2015, which provides that the Department of Workforce Development shall be a defendant and shall be named as a party to all appeals of commission unemployment insurance decisions filed in court. (In addition, as stated above, the rule was duplicative because it restated a provision in **Wis. Stat. § 108.09(7)**.)

- 7) **LIRC 3.01** explaining that petitions for commission review of worker's compensation decisions may be filed with the commission or the Department of Workforce Development.

This rule conflicted with **Wis. Stat. § 108.18(3)**, amended in 2015, which provides that petitions may be filed with the commission, the Department of Workforce

Development, or the Division of Hearings and Appeals in the Department of Administration.

- 8) **LIRC 3.04** providing that compromise settlements in worker's compensation cases shall be submitted to the commission for remand to the Department of Workforce Development.

This rule conflicted with **Wis. Stat. § 108.18(4)(d)**, amended in 2015, which provides that compromise settlements in worker's compensation cases shall be submitted to the commission for remand to the Department of Workforce Development or the Division of Hearings and Appeals in the Department of Administration.

The commission did rulemaking and resolved the issues referenced above through revisions made during that process. LIRC's new rules went into effect August 1, 2022.

Sincerely,



Anita J. Krasno
LIRC General Counsel

cc: Alexandra Arkin, DOA